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No. 85-1828

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

DANIEL RHOADES,

Petitioner,

– against –

ACLI GOVERNMENT SECURITIES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY BRIEF IN FURTHER SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DANIEL RHOADES
Petitioner pro se
12 East 31st Street
New York, New York 10016
(212) 684-7480

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The petition herein says the Second Circuit erred by failing to note the difference between (1) the issue in the enjoined state court action based on deceit by New York attorneys in violation

of New York Judiciary Law, Section 487, and (2) the issue in the federal court as to whether it had jurisdiction of the case in which the New York attorneys committed that deceit.

The petition presents the question of construing the exception clause of the federal anti-injunction statute (28 U.S.C. Sec. 2283), and permitting enforcement of the civil remedy clause in the New York Judiciary Law, Section 487, which seeks to discourage deceit by lawyers and thus to protect the New York state public interest, and thus to assure comity between federal and state courts.

The opposing brief submitted by the attorneys who committed the deceit contains citation of a few cases that are not in point. The opposing brief fails to consider the scope and purpose of Judiciary Law, Section 487 under which peti-

tioner brought the enjoined state court action.

The opposing brief's only reference to this subject matter is a conclusory assertion that petitioner's state court action "invokes no New York State public policy interest". (Opposing Brief, p. 5)

This conclusory assertion is patently false. The very fact that the New York legislature created a private cause of action permitting treble damages against deceitful attorneys is sufficient evidence of the New York State public policy interest involved. See New York State Judiciary Law, Section 487.

Furthermore, as pointed out in the petition, this Court has consistently held that the states have the primary responsibility to police the conduct of attorneys. See the cases cited in the

petition, Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978) and Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975).

The state court action is based on deceit. Therefore, the conclusory assertion at p. 6 of the opposing brief that what the attorneys said is "unquestionably true", is merely another attempt by the attorneys to commit another deceit. Neither the Circuit Court nor the District Court held that the attorneys did not commit that deceit.

The opposing brief asserts that petitioner makes claims that are "baseless" and "have been litigated previously". This is a false statement as to the question of jurisdiction.

The state court action seeks a determination as to a distinctly different question: whether the lawyers for the ostensible respondent herein made deceitful statements and used deceitful tactics

in connection with the assertion of federal court jurisdiction in the prior litigation.

Federal jurisdiction is not available to decide this question. The resolution of this question must be had in the state court, because both petitioner and the New York attorneys reside in the State of New York. The federal court does not have, and never had, jurisdiction of the question presented in the state court.

The simple issue herein is whether petitioner should be enjoined from having a state court hear his claim that the New York statute was violated.

The state court action enjoined herein involves an issue as to deceit. That issue is separate and distinct from the issue as to jurisdiction.

This Court, by removing the injunction, will allow the New York

courts to perform their duty to discourage deceit by New York attorneys, and thus to protect the New York public interest.

CONCLUSION

It is respectfully requested that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

DANIEL RHOADES
Petitioner, pro se
12 East 31st Street
New York, N. Y., 10016
(212) 684-7480